IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2007

CORAM

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

C.R.P.(NPD).No.112 of 2006

Natarajan .. Petitioner/3rd Respondent

Versus

1.Manimegalai ..1st Respondent/Petitioner
2.K.Balasubramaniam ..2nd Respondent/2nd Respondent

Prayer:-This civil revision petition has been filed under Section 25 of Tamil Nadu Building (Lease & Rent Control) Act, 18 of 1960, against the judgment and decree dated 25.4.2005 in RCA.No.1 of 2004 passed by the learned Subordinate Judge, (Rent Control Appellate Authority), Pollachi, reversing the order dated 22.2.2002 made in RCOP.No.18 of 2001 on the file of the learned District Munsif (Rent Controller), Valparai.

For Plaintiff : Mr.B.Soundra Pandian, Advocate

For Defendants : Mr.P.Valliappan, Advocate (for R1)
R2 given up

ORDER

This revision has arisen out of the judgment in RCA.No.1 of 2004 on the file of the Rent Control Appellate Authority (Subordinate Judge), Pollachi, which had arisen out of the order in RCOP.No.18 of 2001 on the file of the Rent Control Appellate Authority (District Munsif), Valparai. RCOP.No.18 of 2001 was filed by the Transferee of the original land-lady under Section 10(2)(i) & 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control), Act 1960, (hereinafter referred to as 'The Act').

2.Originally the deceased K.M.Gopal, an advocate, was in occupation of the petition schedule premises as tenant under the vendor of the sale deed dated 11.6.1993 in favour of the Manimegalai, the petitioner in RCOP.No.18 of 2001. According to the petitioner / landlady in RCOP.No.18 of 2001 previous tenant K.M.Gopal was in occupation of the petition schedule building for a monthly rent of Rs.1,000/-. After K.M.Gopal, the present respondents 2 & 3 were in possession of the petition schedule building along with the first Respondent P.Shanmugam and R1 to R3 are

https://hcservices.ecourts.gov.in/hcservices/

advocates. R1 – P.Shanmugam died pending petition and R2 – K.Balakrishnan had already vacated the premises and now R3 is in occupation of the petition schedule building.

3.According to the petitioner, R3 has committed willful default in payment of rent and that the building is required for is own business. The first respondent had filed a counter, which was adopted by R2 & R3. The first respondent would admit that one Gopal and R1 were in occupation of the building as tenants, but subsequent to the sale deed dated 11.6.1993 in favour of the land-lady the tenancy was not attorned in favour of the respondent and there was no landlady tenant relationship exist between the petitioner and the respondents. The specific defence taken by the first respondent was that the previous landlord's son Krishnaraj had borrowed Rs.30,000/- from the first respondent and K.M.Gopal and agreed to adjust the interest of 2% pa towards the admitted rent of Rs.600/- pm and on that score they would contend that there is no arrears of rent.

4.Before the learned Rent Controller, Natarajan, the husband of Manimegalai(Petitioner) was examined as P.W.1 and 3rd respondent – contesting respondent M.Natarajan was examined as R.W.1 and Ex.A.1 to Ex.A.4 were marked on the side of the petitioner and no document was marked on the side of the respondents. After going through the evidence both oral and documentary let in before him, the learned Rent Controller has accepted the defence of the 3rd respondent as to the fact that there was no landlady tenant relationship between the petitioner and the 3rd respondent and that there was no arrears of rent and that there was no necessity to go into the question whether the petition schedule premises is required for the petitioner for his personal use, had dismissed the petition filed by the landlady. Aggrieved by the findings of the learned Rent Controller, the landlady preferred an appeal in RCA.No.1 of 2004 before the learned Rent Control Appellate Authority (Subordinate Judge) Pollachi. The learned Rent Control Appellate Authority taking a different view from that of the view taken by the learned Rent Controller has allowed the appeal thereby set aside the findings of the learned Rent Controller giving one month time to the 3rd respondent to vacate and handover possession to the petitioner, which necessitated the 3rd respondent – tenant to prefer this revision.

5.Heard the learned counsel for the revision petitioner as well as the learned counsel for the respondent and considered their respective submissions.

6.The learned counsel for the revision petitioner taking this Court through the evidence of P.W.1 would contend that there was no notice admittedly issued by the landlady after taking Ex.A.2-sale deed in her favour in respect of the petition schedule property from the original owner's eldest son Krishnaraj and there was no attornment of tenancy, which was not taken note of by the Rent Control Appellate Authority.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7.To answer this point, the learned counsel for the 1st respondent herein relying on Section 109 of the Transfer of Property Act 1882, would contend that attornment of tenancy is not a pre-condition for the landlady to initiate proceedings against the tenant. Section 109 of the Transfer of Property Act 1882 runs as follows:-

> "If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the leasee, unless the lessee elects to treat the transferee as the person liable to him:
>
> Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.
>
> The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

In support of the said proposition of law, the learned counsel for the 1st respondent would rely on a ratio decidendi in AIR 1993 PATNA 1 (Smt.Kalawati Tripathi and others, Vs. Smt.Damayanti Devi and another). The relevant observation in the said dictum relevant for the purpose of deciding this revision runs as follows:-

> " Attornment is creature of contract. Attornment is not a mere agreement in favour of a third party to pay rents but has been defined as an act of the tenant putting one person in the place of another as his landlord. It is clear from Section 109 that after the transfer of lessor's right in favour of the transferee he gets all the rights and liabilities of the lessor in respect of the subsisting tenancy. This Section does not insist that the transfer will take effect only when the tenant attorns. The provisions of this Section give a validity to the transfer made by the lessor with regard to his right in favour of the transferee regarding the subsisting tenancy.
>
> An attornment by lessee to the assignee of lessor is not necessary for creating a subsisting tenancy. The transferee of the lessee steps into the shoes and possess all the rights which the transferor has. The attornment by tenant is not essential to give

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

validity to the transfer made in favour of the transferee. The submission made on behalf of the tenant that the suit for eviction was not maintainable, as there was no attorment by the tenant, therefore is without any substance."

The same principle of law has been reiterated in the ratio in AIR 1988 SC 1365 (Mohar Singh (Dead by LRs) Vs. Devi Charan and others), wherein the Honourable Apex Court have held as follows:-

"A landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant. But Section 109, T.P.Act, provides a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned subject, of course, to the other covenant running with the land. This is the true effect of the words 'shall possess all the rights... of the lessor as to the property or part transferred.... " occurring in Section 109, T.P.Act. There is no need for a consensual attronment. The attornment is brought about by operation of law. The limitation on the right of the landlord against splitting up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the reversion. There is no need for the consent of the tenant for the severance of he reversion and the assignment of the part so severed. AIR 1920 Mad 838 (FB) Approved AIR 1951 SC 186, Distinguished"

The same principle has been followed in AIR 2002 ANDHRA PRADESH 369 (Yelamati Veera Venkata Jaganadha Gupta and another Vs. Vejju Venkateswara Rao and others), wherein it has been observed that title to property transferred from landlord in the absence of agreement of tenancy between tenant and transferee is not material.

8.So, under such circumstances, the contention of the learned counsel appearing for the revision petitioner that there is no attornment of tenancy by the landlady after Ex.A.2 - sale deed cannot be sustainable. The defence taken by R3 in the rent control petition for Section 10(2)(1) of the Act is that Krishnaraj, the son of the previous landlord, had borrowed Rs.30,000/- from K.M.Gopal and Shanmugam, the previous tenants, and that there was a consensus ad-idem entered into between them to adjust 2% interest on the sum borr0wed towards the admitted monthly rent of Rs.600/-. The 3rd respondent in his evidence as R.W.1 would go a further step and said that he had repaid the said sum of Rs.30,000/- to Shanmugam, who had given liberty to adjust the rent on the previous agreement between the previous landlord and Shanmugam. To substantiate this defence, the 3rd respondent has not adduced any evidence to show that there was a borrowal of Rs.30,000/- from Shanmugam and Gopal by Krishnaraj, the son of the previous landlord. Even though the Rent Controller as well as the Rent Control Appellate Authority have failed to divulge upon the question whether the property is required for the presonal requirement of the landlord, the fact remains that under Section 10(2)(1) of the Act, the 1st respondent herein is liable to vacate and handover possession to the landlord. Under such circumstance, I do not find any material to

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

interfere with the well considered findings of the learned Rent Control Appellate Authority in RCA.No.1 of 2004 to warrant any interference from this Court.

9.In fine, the Civil Revision Petition is dismissed confirming the findings of the Rent Control Appellate Authority in RCA.No.1 of 2004 on the file of the Subordinate Judge, Pollachi. No costs. Time for vacating and handing over the possession is three months from today. Affidavit of undertaking to be filed within a week by the tenant/revision petitioner.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Subordinate Judge,
(Rent Control Appellate Authority),
Pollachi.

2.The District Munsif (Rent Controller),
Valparai.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.Valliappan, Advocate Sr.No.73929.

+1 cc to Mr.B.Soundra Pandian, Advocate Sr.No.73834.

VSV(CO)
DCP/9.1

C.R.P.(NPD).No.112 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/